



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

**[MB Docket No. 17-105; FCC 18-150]**

**Procedural Revisions to the Filing of Open Video System Certification Applications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) modernizes the Open Video System (OVS) filing procedures by specifying that OVS applications be required to send certification applications, including FCC Form 1275 and all attachments, as well as notices of intent, via electronic email (email) delivery to a designated Commission e-mail address. The FCC also eliminates certain existing requirements associated with the rule. Parties wishing to respond to a FCC Form 1275 filing must submit comments or oppositions via electronic mail (e-mail).

**DATES:** Effective date: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Sonia Greenaway Mickle, [Sonia.Greenaway@fcc.gov](mailto:Sonia.Greenaway@fcc.gov), of the Policy Division, Media Bureau, (202) 418-1419.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, FCC 18-150, adopted and released on October 25, 2018. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Copies of the materials can be obtained from the FCC's Reference Information Center at (202) 418-0270. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to

fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## Synopsis

1. The Commission in this Order establishes electronic filing procedures for parties seeking to operate an Open Video System (OVS) to submit a certification application and notice of intent. By replacing our current paper filing requirements for OVS applications and notices with an electronic filing system, this Order modernizes our regulations, reduces burdens for OVS applicants, and increases the efficiency of the Commission's processing of applications.

2. The Telecommunications Act of 1996 added section 653 to the Communications Act of 1934, as amended (the Act), establishing OVS as a new framework for entry into the multichannel video programming distribution marketplace.<sup>1</sup> Any party seeking to operate an OVS must file an application to be certified as an OVS operator on FCC Form 1275<sup>2</sup> as well as a "notice of intent" to establish an OVS.<sup>3</sup> At present, parties cannot file these documents electronically. Instead, they must file paper copies of both documents with the Office of the Secretary and the Office of the Chief of the Media Bureau<sup>4</sup> and file the

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, approved February 8, 1996. An open video system is similar to a cable system in that it is a facilities-based system for the delivery of video programming. Unlike cable systems, however, open video systems must set aside up to two thirds of their channel capacity for the delivery of independent programming of third parties. The OVS framework was established to provide competition and lower barriers to entry in the provision of video programming to consumers. *See Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems*, 11 FCC Rcd 18223, 18227, para. 2-3 (1996) (*Second Report and Order*). The approach developed for the OVS model provides streamlined regulations and reduced regulatory burdens. *See* 47 U.S.C. 573(c).

<sup>2</sup> 47 U.S.C. 573(a)(1); 47 CFR 76.1502. The Form 1275 includes facts and representations regarding the OVS applicant and system information, including the anticipated communities or area to be served upon completion of the open video system. *See* <https://transition.fcc.gov/Forms/Form1275/1275.pdf>.

<sup>3</sup> 47 CFR 76.1503(b)(1). In order to commence the channel allocation process, an OVS operator is required to file a notice of intent with the Commission. A notice of intent provides details regarding the operator's projected channel capacity, service area, and other technical information about the operator's system. *Second Report and Order*, 11 FCC Rcd at 18252, para. 45.

<sup>4</sup> *See Second Report and Order*, 11 FCC Rcd at 18247, para. 34 (1996) (stating that "hard copies of the [Form 1275] certification forms be filed with the Office of the Secretary, Federal Communications Commission"); *see also id.* at Appendix C ("A hard copy of FCC Form 1275 and all attachments must be filed with the Office of the Secretary, Federal Communications Commission . . . and with the Office of the Bureau Chief, Cable Services Bureau"). The Cable Services Bureau was superseded by the Media Bureau in 2002. *See Establishment of the Media Bureau and Other Organizational Changes*, Order, 17 FCC Rcd 4510 (2002); *see also* 47 CFR 76.1503(b)(1) (stating that Notices of Intent must be filed with the Secretary of the Federal Communications Commission and directed to the

certification application on a computer disk. The documents are then delivered to the Media Bureau staff who process and review them. After a Form 1275 certification application is processed by Media Bureau staff, a public notice is published on the Commission's website. Comments or oppositions to certification applications must be filed within five calendar days of the date the application is received at the Commission.<sup>5</sup> Pursuant to Section 653, the Commission must act to approve or disapprove any OVS certification request within ten days of its receipt.<sup>6</sup> To implement this statutory requirement, the Commission's rules provide that "[i]f the Commission does not disapprove the certification application within ten days after receipt of an applicant's request, the certification application will be deemed approved."<sup>7</sup> Media Bureau staff also provide public notice of OVS notices of intent.<sup>8</sup>

3. Because electronic filing is a more modern and efficient way for parties to file and for Commission staff to receive applications, we conclude that the OVS paper filing requirements have outlived their usefulness. The Commission has moved to electronic filing for other applications and filings.<sup>9</sup> Moreover, the nature of the OVS application process necessitates immediate receipt by appropriate staff, which can better be assured via electronic means. On several recent occasions, tracking down OVS applications mailed to Commission headquarters has been time consuming for staff and has caused processing delays. In addition, the requirement to file the certification application on a computer disk is an unnecessary, duplicative, and outdated mode of information delivery. Given the very short deadline by which the Commission must act on OVS certification applications, processing delays and outdated requirements have proven to be problematic for both the staff of the Media Bureau and OVS

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Media Bureau). Some of the specific filing requirements do not appear in the OVS rules, but in other locations such as in the instructions for FCC Form 1275.

<sup>5</sup> 47 CFR 76.1502(e)(1).

<sup>6</sup> 47 U.S.C. 573(a)(1).

<sup>7</sup> 47 CFR 76.1502(f).

<sup>8</sup> 47 CFR 76.1503(b)(1).

<sup>9</sup> See, e.g., *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 79 FR 73844, Dec. 12, 2014, 29 FCC Rcd 14078 (2014).

applicants.<sup>10</sup>

4. Therefore, we modify the procedural rules for the filing of OVS certification applications and notices of intent to make the process less burdensome for applicants and to ensure that these documents are timely received by Commission staff.<sup>11</sup> We conclude that the most efficient process is for OVS applicants to send certification applications, including FCC Form 1275 and all attachments, as well as notices of intent, via electronic mail (e-mail) delivery to a designated Commission e-mail address.<sup>12</sup> Specifically, under the rule we adopt here, when filing a certification application or notice of intent, applicants will be required to send all documents to the following e-mail address: OVS@fcc.gov. Comments or oppositions also will be required to be sent via e-mail to this same designated e-mail address.<sup>13</sup> The rule changes in this Order do not affect the requirement that the certification application must be served on all local communities in which the applicant intends to operate.<sup>14</sup> We note that the rule changes adopted herein involve a non-substantive change to an approved information collection for which

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<sup>10</sup> In at least one recent case, an OVS application was received by Media Bureau staff weeks after it was received at the Commission. The Media Bureau failed to have an opportunity to place the application on Public Notice or to review and assess the application within the ten-day timeframe specified by the Communications Act and the Commission's rules, and the application was deemed approved by operation of law. After reviewing the OVS certification application, it was deemed deficient, requiring the Media Bureau to adopt a *sua sponte* Order on Reconsideration revoking the OVS certification. See *Digital Broadcasting Certification to Operate an Open Video System*, 32 FCC Rcd 3149 (MB 2017).

<sup>11</sup> The rule revisions adopted in this Order and set forth in the Final Rules section are procedural in nature. Because they modify existing agency procedural rules, notice and comment procedures are not required under the Administrative Procedure Act. See 5 U.S.C. 553(b) (stating that notice and comment requirements do not apply to rules of agency procedure); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Notice of Proposed Rulemaking, 75 FR 14401, March 25, 2010, 25 FCC Rcd 2430, 2430, para. 1 n.1; 2434, para. 11 n.15; 2436, para. 16 n.23 (2010); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 76 FR 24383, May 2, 2011, 26 FCC Rcd 1594, 1598, para. 10 n.23; 1600, para. 15 n.44 (2011) (notice and comment is not required for procedural changes).

<sup>12</sup> Because the certification application will be electronically delivered to a designated OVS email box, a specific cover sheet identifying the filing as an "OVS Certification Application" and "Attention: Media Bureau" is no longer necessary. Therefore, we are eliminating the requirement that a cover sheet be filed with a certification application, comments, or oppositions. See 47 CFR 76.1502(d)(2), (e)(2). We also are eliminating the cover sheet requirements for notices of intent. See 47 CFR 76.1503(b)(1). In addition, computer disks are no longer required to be filed.

<sup>13</sup> See the Final Rules section. As under the current rule, comments or oppositions to a certification must be served on the party that filed the certification. 47 CFR 76.1502(e)(1).

<sup>14</sup> See 47 CFR 76.1502(d)(1); see also 47 CFR 76.1502(f) (requiring that, if an application is disapproved, a refiled application must be served on any objecting party or parties and on all local communities in which the applicant intends to operate); 47 CFR 76.1503(b)(1)(viii) (requiring that a notice of intent be served on all local franchising authorities).

we must obtain Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA) before the rule changes can take effect. To expedite the ability of parties and staff to utilize these new procedures, we make these rule revisions effective upon publication of the Order in the Federal Register. The requirement that publication of a “substantive” rule be made at least 30 days before its effective date does not apply to the procedural rules adopted in this Order.<sup>15</sup>

5. Paperwork Reduction Act. This document contains a non-substantive and non-material modification of information collection requirements that were previously reviewed and approved by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.<sup>16</sup> Filing burdens are reduced with the use of email filings to the Commission.

6. Congressional Review Act. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

7. Accordingly, **IT IS ORDERED** that part 76 of the Commission’s rules **IS AMENDED**, as set forth in the Final Rules section, pursuant to the authority contained in sections 4(i), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 573.

8. **IT IS FURTHER ORDERED** that this Order and the rule changes adopted herein shall be effective upon publication in the **Federal Register**.

#### **List of Subjects in 47 CFR Part 76**

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<sup>15</sup> See 5 U.S.C. 553(d)(3) (stating that publication of a “substantive” rule shall be made not less than 30 days before its effective date, except . . . as otherwise provided by the agency for good cause found and published with the rule). We anticipate that these new procedures will significantly decrease the likelihood that a certification application will fail to reach Media Bureau staff prior to the time that it is deemed approved. We likewise expect that, since the new procedures will decrease filing burdens on applicants and other filers, no filing party or opponent of an OVS application is likely to be prejudiced by the rules taking effect upon publication of the Order in the Federal Register.

<sup>16</sup> See OMB, Notice of Office of Management and Budget Action, ICR Reference No. 201604-3060-006, OMB Control No. 3060-0700 (May 23, 2016), [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201604-3060-006#](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-3060-006#) (select the “Retrieve Notice of Action (NOA)” hyperlink); 5 CFR 1320.5(g) (stating that an agency may not make “a substantive or material modification to a collection of information” after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under 5 U.S.C. Part 1320).

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,  
*Federal Register Liaison Officer,*  
*Office of the Secretary.*

## **Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

### **PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Amend § 76.1502 by revising paragraphs (d), (e)(2), and (f) to read as follows:

#### **§ 76.1502 Certification.**

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(d)(1) All open video system certification applications, including FCC Form 1275 and all attachments, must be filed via electronic mail (e-mail) at the following address: OVS@fcc.gov. The subject line shall read “Open Video System Certification Application.” Open video system certification applications will not be considered properly filed unless filed as described in this paragraph (d).

(2) On or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing on all local communities identified pursuant to paragraph (c)(6) of this section and must include a statement informing the local communities of the Commission’s requirements in paragraph (e) of this section for filing oppositions and comments. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least 3 days prior to the filing of the FCC Form 1275 with the Commission.

(e) \* \* \*

(2) Parties wishing to respond to a FCC Form 1275 filing must submit comments or oppositions via

electronic mail (e-mail) at the following address: OVS@fcc.gov. The subject line shall read “Open Video System Certification Application Comments.” Comments and oppositions will not be considered properly filed unless filed as described in this paragraph (e).

(f) If the Commission does not disapprove the certification application within ten days after receipt of an applicant’s request, the certification application will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute in accordance with the procedures described in paragraph (d) of this section. Such refilings must be served on any objecting party or parties and on all local communities in which the applicant intends to operate pursuant to instructions in paragraph (d)(2) of this section. The Commission will consider any revised or refiled FCC Form 1275 to be a new proceeding and any party who filed comments regarding the original FCC Form 1275 will have to refile their original comments if they think such comments should be considered in the subsequent proceeding.

3. Amend § 76.1503 by revising paragraph (b)(1) introductory text to read as follows:

**§ 76.1503 Carriage of video programming providers on open video systems.**

\* \* \* \* \*

(b) \* \* \*

(1) Notification. An open video system operator shall file a “Notice of Intent” to establish an open video system, which the Commission will release in a Public Notice. The Notice of Intent must be filed via electronic mail (e-mail) at the following address: OVS@fcc.gov. The subject line shall read “Open Video System Notice of Intent.” An Open Video system notice of intent will not be considered properly filed unless filed as described in this paragraph (b). This Notice of Intent shall include the following information:

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[FR Doc. 2018-25913 Filed: 11/27/2018 8:45 am; Publication Date: 11/28/2018]